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No.

In the Supreme Court of the United States

CITY OF CINCINNATI POLICE OFFICERS
ROBERT JORG, PATRICK CATON, VICTOR SPELLEN,
DARREN SELLERS, AND DAVID HUNTER,
Petitioners,

v.

ESTATE OF ROGER OWENSBY, JR.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Where police officers were present for only several minutes at the scene of an arrest, the arrestee was placed in the physical custody of another jurisdiction's police vehicle, the officers only had very limited time and information available to them, and they did not know that the arrestee had suffered cardiac arrest and cessation of breathing, must a court apply the "malice and intent to harm" substantive due process standard, rather than the "traditional deliberate indifference" standard, to the claim that the officers unconstitutionally delayed providing medical care to the arrestee?

2) Whether a court must apply the standard in *Brosseau v. Haugen*, 543 U.S. 194 (2004), to police officers' claims to qualified immunity from suit in order to determine whether the law was clearly established in the particularized sense at the time of the officers' alleged culpable conduct?

3) Even applying the traditional deliberate indifference standard to the claim that police officers from one jurisdiction unconstitutionally delayed providing medical care to an arrestee in the custody of another jurisdiction's police vehicle, are the police officers entitled to qualified immunity from suit since they did not have a subjective awareness of the arrestee's cardiac arrest and cessation of breathing?

4) Rather than considering the allegations against the nonmoving defendant police officers in the light most favorable to the plaintiff who filed the motion for summary judgment, must courts evaluating the motion and the police officers' qualified immunity defense instead determine whether there are genuine issues of material fact?

LIST OF PARTIES

Petitioners: City of Cincinnati Police Officers Robert Jorg, Patrick Caton, Victor Spellen, Darren Sellers, and David Hunter

Respondent: Estate of Roger Owensby, Jr.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, City of Cincinnati Police Officers Robert Jorg, Patrick Caton, Darren Sellers, Victor Spellen, and David Hunter, respectfully pray that a writ of certiorari be issued to review the final judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Order of the United States District Court, Southern District of Ohio, Western Division, was filed May 20, 2004. App. 18a, *et seq.* That Order denied the Petitioners their entitlement to qualified immunity from suit on the Respondent's claim that the officers unconstitutionally delayed the provision of medical care at the scene to Mr. Roger Owensby, Jr., an arrestee placed in the physical custody of another jurisdiction. App.80a. The Order also granted the Respondent's motion for summary judgment on that claim against three of the Petitioners. App.61a-64a, 101a.

On July 7, 2005, a panel of the United States Court of Appeals for the Sixth Circuit affirmed the Order of the District Court denying the Petitioners their entitlement to qualified immunity from suit. App. 3a, *et seq.* The order of the Court of Appeals denying the Petition for Rehearing *En Banc* was issued on December 7, 2005. App.1a-2a.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides in part:

> ****nor shall any State deprive any person of life, liberty, or property, without due process of law****

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On November 7, 2000, City of Cincinnati police officers spoke to Mr. Roger Owensby, Jr., at a convenience store to investigate whether he was an individual wanted for previous criminal offenses. Mr. Owensby's identity as the suspect was confirmed by Officer Hunter. Then, in the words of his

estate, Mr. Owensby "bolted" just as Police Officer Jorg was reaching for his handcuffs. Police Officers Jorg and Caton grabbed Mr. Owensby, they fell to the ground, and Mr. Owensby resisted arrest by keeping his arms underneath him. It took several officers about one minute and twenty seconds to handcuff Mr. Owensby and secure him in custody. The Cincinnati police officers contest all the estate's allegations that the force used to handcuff Mr. Owensby was excessive.[1] Within about twenty seconds, Mr. Owensby was placed in the physical custody of a Village of Golf Manor police vehicle guarded by Village of Golf Manor police officers (Golf Manor is a jurisdiction adjacent to the City of Cincinnati whose officers had immediately responded to the call for assistance).

Approximately 5 ½ minutes after being placed in the Golf Manor vehicle, a Cincinnati police sergeant detected that Mr. Owensby was not breathing. Cincinnati police officers immediately removed Mr. Owensby from the Golf Manor vehicle and provided medical care to him. Nevertheless, Mr. Owensby died.

Asserting federal court jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343, the Respondent estate filed suit alleging that Mr. Owensby had been deprived of his right to medical care, his right to be free from the use of excessive force, and violations of state law. After discovery, the Respondent filed a motion for summary judgment on the

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[1] There have been no rulings on the use of force allegations. They will be tried to a jury. Throughout the litigation, the estate has exaggerated and misrepresented the force used to take Mr. Owensby into custody. The Petitioners and the City of Cincinnati challenge and reject those allegations.